



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-00819
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

11/13/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on June 3, 2016. On April 17, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on May 9, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 25, 2018, and the case was assigned to me on August 15, 2018. On August 27, 2018, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 27, 2108. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and presented the testimony of one witness. He did not submit any documentary evidence. I left the record open until October 12, 2018, to enable him to submit documentary evidence. He submitted Applicant's Exhibit (AX) A, which was admitted without objection. DOHA received the transcript (Tr.) on October 5, 2018.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 32-year-old machinist employed by defense contractors since April 2014. He served on active duty in the U.S. Navy from February 2006 to February 2013 and received a general discharge under honorable conditions. He has held a clearance since June 2006 and is seeking to retain it.

Applicant married in January 2011. Around 2013, he and his wife voluntarily separated for about a year and then reconciled. (Tr. 42.) They have three children, ages eight, six, and three. (Tr. 34.)

Applicant's wife is a full-time student and is not employed. (Tr. 22.) She served on active duty in the U.S. Navy for eight years. She received an honorable discharge in November 2016, and receives a student stipend of about \$1,600 per month under the GI Bill. (Tr. 29-30.) She was discharged under the Navy high-tenure rules because she was not promoted to petty officer second class after eight years of service. (Tr. 41.)

Applicant testified that he was discharged from the Navy because he stopped caring about his military duties when he and his wife separated and were on the verge of divorce. He was late for work several times, insubordinate, received nonjudicial punishment, and was administratively discharged for his repeated misconduct. (Tr. 48-50.)

Applicant was unemployed from February 2013 to April 2014. While he was unemployed, he was a full-time student at a technical school from September 2013 to April 2014, received benefits under the GI Bill, and earned a certificate as a welder.

The SOR alleges a deficiency of \$13,452 after repossession of an automobile (SOR ¶ 1.a); a credit-card account charged off for \$6,481 (SOR ¶ 1.b); an overdraft of \$887 from a credit-union account (SOR ¶ 1.c); a charge account charged off for \$535 (SOR ¶ 1.d); a medical bill referred for collection of \$217 (SOR ¶ 1.e); and a cellphone bill referred for collection of \$676 (SOR ¶ 1.f). All the debts became delinquent after

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

Applicant was discharged, and they are reflected in credit reports from September 2016 (GX 2) and February 2018 (GX 3.).

Applicant and his wife testified that they did not believe they owed the medical debt alleged in SOR ¶ 1.e, because she was on active duty in the Navy when the debt was incurred, and they believed it should have been paid by TRICARE. The credit report from February 2018 reflects that the debt is disputed. (GX 3 at 2.)

Applicant and his wife hired a credit-repair company about a year ago. The credit-repair company's report reflected a medical collection account being handled by the company and that it was no longer being reported by the three credit bureaus. (AX A.) The report also reflected that the company was handling the four debts alleged in SOR ¶¶ 1.a-1.d and that they were still reflected as delinquent by the credit bureaus. The cellphone debt alleged in SOR ¶ 1.f is not reflected among the accounts being handled by the credit-repair company. It was not reflected in the February 2018 credit report. (GX 3.)

Applicant and his wife hired another credit-repair company in about August 2018, because they were not satisfied with the progress the first company was making. They have paid the second credit-repair company about \$200. However, the second company has not yet provided them with a list of creditors to be included in their program and has not made any payments to the creditors alleged in the SOR. (Tr. 38-39, 43-44.).

Applicant's take-home pay is about \$1,200 per week. He has about \$2,800 in a savings account, and about \$18,000 in a 401(k) account. His rent is \$600 per month, and he has two car payments for \$550 and \$343. His net weekly remainder is about \$700. (Tr. 54-56.) He keeps a bi-weekly budget. He and his wife have not received financial management counseling from either of their credit-repair companies. (Tr. 43-44.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and

commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr.20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the evidence submitted at the hearing establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's premature discharge from the Navy was not a condition beyond his control, because it was the result of his repeated misconduct. His wife's discharge from the Navy under the high-tenure rules was a condition beyond his control. However, he has not acted responsibly. Even though he has been employed for more than four years, he took no action to resolve his delinquent debts until he hired a credit-repair company about a year ago, three years after the debts became delinquent. He has admitted the debts in SOR ¶¶ 1.a-1.d and 1.f, but they remain unresolved. He recently hired a new credit-repair company, but he was unable to describe in any meaningful detail how this company will resolve his delinquent debts, and he admitted that the new company has not made any payments to creditors.

AG ¶ 20(c) is not established. Neither of Applicant's credit-repair companies are non-profit credit-counseling services. They are for-profit credit-repair services that focus on challenging credit reports and negotiating settlements. They do not provide the type of financial counseling contemplated by this mitigating condition. Furthermore, Applicant has failed to submit "clear evidence" that his financial problems are being resolved or are under control.

AG ¶ 20(d) is not established. Applicant submitted no evidence of payments, payment plans, or other resolution of the debts alleged in SOR ¶¶ 1.a-1.d and 1.f. The fact that the cellphone debt alleged in SOR ¶ 1.f is not listed in the February 2018 credit report does not establish that the debt was resolved. The mere fact that a debt is no longer reflected in a credit report "does not establish meaningful evidence as to the debt's disposition." ISCR Case No. 15-00254 at 3 (App. Bd. Aug. 26, 2016).

AG ¶ 20(e) is established for the medical debt alleged in SOR ¶ 1.d. In Applicant's answer to the SOR, he admitted the medical debt alleged in SOR ¶ 1.e, but he disputed it at the hearing, contending that it should have been covered by TRICARE because it was incurred while his wife was on active duty. The February 2018 credit report reflected that Applicant had disputed the debt. I have resolved the allegation in SOR ¶ 1.e in his favor.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d).²

² The factors are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.d:	Against Applicant
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Subparagraph 1.e:	For Applicant
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Subparagraph 1.f:	Against Applicant
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Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge